EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL
O/CONGRESSIONAL AFFAIRS
87-1334

April 6, 1987

LEGISLATIVE REFERRAL MEMORANDUM

TO: **Legislative Liaison Officer -**

National Security Council
Central Intelligence Agency
Department of Defense - Brick - 697-1305 (06)
Department of Justice - Perkins - 633-2113 (17)
Department of the Treasury - Carro - 566-8523 (28)

SUBJECT: Draft State testimony on H.R. 1013 on Prior Notice of Covert Actions for an April 8, 1987 hearing.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than COB, TODAY, APRIL 6, 1987.

Questions should be referred to Annette Rooney/Sue Thau (395-7300), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON for
Assistant Director for
Legislative Reference

Enclosures

cc: R. Neely
J. Eisenhour
J. Cooney

SPECIAL

STATEMENT BY

Curtis W. Kamman
Acting Assistant Secretary
Bureau of Intelligence and Research
Department of State

House Permanent Select Committee Hearing
on H.R.1013

April 8, 1987

The amendments proposed by the bill under consideration go to the heart of intelligence activities that extend beyond the collection of information, a category commonly known as covert action. Covert action is a necessary tool of foreign policy. The President must have at his disposal means to affect international events of vital interest to the US covertly when circumstances would make overt action unwise or impossible. There are times when our vital interests require action, but the revelation or acknowledgment of US involvement would increase the possibility of international confrontation or hinder related efforts on the political or diplomatic front. The President is in the best position to determine when to incorporate a covert option into the implementation of a particular policy..

Americans can reasonably disagree about the specific decisions of a President to employ covert action, but few would argue that there are no circumstances justifying such activity. In some situations, it may be the only means of achieving the highest humanitarian and political objectives.

There are two cardinal working principles of covert action. First, before beginning any covert program, we should be confident that we can publicly defend it politically, legally, and morally. As President Reagan recently said, we must be confident that if and when a covert action operation is disclosed, the American people will say, "that makes sense."

Secondly, any such program which involves secret actions by the government to shape events needs to undergo a continuing and rigorous process of consultation, coordination, and review. The State Department has major responsibility for assuring that foreign policy, together with practical and legal considerations, are fully taken into account in decisions regarding covert action. Support from the Congress and accountability to the Congress are indispensable elements in the control and monitoring process. The success and sustainability of a covert program depends upon Congressional awareness and understanding. The Executive Branch must therefore meet both the letter and the spirit of the legally mandated review and oversight functions of the Congressional intelligence committees.

Covert action in reality has to be a product of interagency deliberation to deal with a specific foreign policy problem. The process is expressed in the President's recent directive to implement the recommendations of the Tower Board. The Administration is ensuring that proposed covert actions be coordinated with all members of the NSC and all their respective recommendations be communicated to the President. The National Security Council's Planning and Coordination Group, of which State is a member, is presently undertaking an intensive review of all covert action programs to ensure such programs are pursued in accordance with law and are consistent with our foreign policy. Further recommendations to improve the interagency process will be presented to the NSC by the National Security Advisor by the end of this month.

We believe the process as set out in existing legislation for intelligence oversight provides adequately for timely notification and continuing consultations with the intelligence committees on covert action proposals and ongoing covert activities. The CIA-SSCI agreed procedures of 1984 and 1986, which the CIA applies with respect to this Committee as well, further strengthened this process.

The Tower Commission report concluded that our recent problems stem from the failings of men and not the system. It cautions that the inflexibility of a legislative restriction should be avoided. In its first specific recommendation the Commission declares "We recommend that no substantive change be made in the provisions of the National Security Act dealing with the structure and operation of the NSC systems."

The President has taken vigorous actions to prevent improper operations by the NSC. The Administration is fully committed to fulfilling scrupulously the intent of Congress in the present law. In attempting to fix a system which is not broken, the risk is that the effectiveness of an important policy tool will be impaired.

In our view, HR 1013 is unnecessarily restrictive and unreasonably intrudes into the Constitutional mandate of the President to conduct the nation's foreign relations. The bill would delete the current language in Section 501 of the National Security Act which acknowledges that the provisions of that Section are subject to the authorities and duties conferred by the Constitution on the executive and legislative branches. Of course, no statutory amendment could limit those Constitutional authorities and duties, but it would be unfortunate to give the appearance, by striking such language, that Congress in some fashion wishes to undermine the President's constitutional prerogatives.

Furthermore, we believe that HR 1013 would not provide the flexibility and discretion which the President must have in carrying out covert action programs in exceptional circumstances. The bill would require that a copy of a written Finding be provided to certain individuals prior to the initiation of any covert operation, but it may not be possible to do so in the event of an urgent need to act. The bill would also place an absolute limit of 48 hours on the President's ability to defer notification in extraordinary cases, which may not be reasonable in the case of highly sensitive operations where the need for the tightest security is essential for the success of the mission and the safety of human lives. The 1980 Iran rescue mission is an example of such a situation.

A requirement for notification within 48 hours of a Finding could actually constitute notification before action is initiated, since many types of action have a longer lead time. Even a requirement for notification within 48 hours of initiation of action could pose great risk while the activity is still underway.

The Executive Branch is firmly committed to using its discretion under current law to defer notification only in genuinely extraordinary circumstances. Such circumstances have arisen only twice in the past, i.e., in regard to the 1980 Iranian rescue effort and the Iranian arms sales of 1985-86.

Obviously, the controversy that has surrounded the 1985-86 arms sales can only heighten any administration's sense of the political risk to be incurred in making such exceptions. Nevertheless, any administration will need to have the flexibility to act to protect the nation's vital interests. One may or may not agree with the grounds for delaying notification during the Iranian arms sales episode, but it would be hard to deny that unforeseen circumstances could occur in which the necessity of having such flexibility would be essential.

The State Department therefore recommends against the adoption of HR 1013.